

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:15-cv-00633-FDW-DCK**

MEINEKE CAR CARE CENTERS, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
321 U.S. HWY 17-92 REALTY TRUST,)	
MAX MOGUL, and JOHN F. O'BRIEN,)	
)	
Defendants.)	
)	
)	

THIS MATTER is before the Court upon Plaintiff's, Meineke Car Care Centers, LLC ("Meineke"), Motion for Default Judgment as to Defendant John F. O'Brien (Doc. No. 14) and the contemporaneously filed Response to Order to Show Cause (Doc. No. 15).

Meineke moves the Court for Entry of Default Judgment against Defendant John F. O'Brien ("Defendant O'Brien"), for Defendant O'Brien's failure to plead or otherwise defend this action, including Count IV of the Complaint pled against Defendant O'Brien for Breach of Contract. (Doc. No 1). On February 25, 2016, the Clerk of Court entered default against Defendant O'Brien for Breach of Contract upon the application of Meineke and pursuant to Fed. R. Civ. P. 55(a). (Doc. No. 12).

Meineke offers the Declaration of Mr. Edward Moore, Meineke's then Vice President of Accounting and Finance, which provides that Defendant O'Brien's indebtedness to Meineke amounts to the principal sum of \$76,862.08, costs of \$514.00, and interest thereon. (Doc. No. 14-2). Defendant O'Brien's indebtedness is based on his promise to guarantee the franchise agreement under which the 321 U.S. HWY 17-92 REALTY TRUST ("Trust") was obligated, (Doc. No. 1-1,

p. 53), and for which the Clerk of Court defaulted Defendant O'Brien on February 25, 2016. (Doc. No. 12).

After reviewing the Motion for Default Judgment and Memorandum of Law in Support, the Court finds Meineke's claim against Defendant O'Brien in Count IV of the Complaint is for a sum certain which has been satisfactorily proved by way of Mr. Moore's declaration. (Doc. No. 14-2).

IT IS, THEREFORE, ORDERED that Meineke's Motion for Default Judgment (Doc. No. 14), is **GRANTED**. The Clerk's Office is respectfully directed to enter judgment in Meineke's favor in the amount of \$76,682.08, plus costs totaling \$514.00, and post-judgment interest at the rate of 8% thereafter, compounded annually, until the entire amount is paid in full.

IT IS FURTHER ORDERED that the parties shall, within thirty (30) days from the date of this Order, either file a joint stipulation of dismissal as to the remaining Defendants as anticipated by the Response to Order to Show Cause (Doc. No. 15) or proceed with the prosecution of this case. **Failure to do so may result in the dismissal of this action for failure to prosecute.**

IT IS SO ORDERED.

Signed: August 24, 2016



Frank D. Whitney
Chief United States District Judge
